Supreme Court, U.S.
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No. 09-416

IN THE

Supreme Court of the United States

GOVERNOR ARNOLD SCHWARZENEGGER, *et. al.*,

Appellants,

v.

MARCIANO *PLATA* AND RALPH *COLEMAN*, *et. al.*,

Appellees.

Appeal from the United States District Courts
For the Eastern District of California and
The Northern District of California

SUPPLEMENTAL BRIEF OF APPELLEES

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January 8, 2010

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On January 5, 2010, the State submitted a Supplemental Brief to this Court concerning an order issued by the single-judge district court in *Coleman v. Schwarzenegger*, No. 2:90-cv-00520-L-JFM (E.D. Cal. Jan. 4, 2010) (Docket No. 3761).

The State suggests that the single-judge court's recent order somehow buttresses the State's contention that the three-judge court's August 4, 2009 preliminary order requiring the State to submit a plan is an appealable final order. However, it should be obvious that nothing an individual member of the three-judge court does as a single judge in one of the underlying cases can change the nature of the order issued by the three-judge court. And it is clear that the three-judge court views its August 4, 2009 order as a preliminary order to be followed by a final and appealable prison release order. *See, e.g.*, Order Denying Stay, J.S. App. 308a; *see also* Appellees' Motion to Dismiss 8-10. That reality is all that matters for purposes of the proper disposition of the State's appeal, and the proper disposition remains dismissal or summary affirmance.

Nonetheless, the State provides a misleading and overly simplistic picture of the *Coleman* court's recent order. The State erroneously suggests that the *Coleman* court's refusal to approve a plan that involves unsafe crowding at one planned specialized health care facility for mentally ill prisoners (the Stark mental health facility) is evidence that the court is applying an across-the-board cap on the prison population. But the court's ruling with respect to the Stark facility is based upon the special master's concerns about the plans for that specific facility. State's Supp. Brief, Add. 2-3. The State

submitted plans to house mentally-ill prisoners at the Stark facility starting in 2013. The special master identified numerous problems with the Stark proposal, and the court took note of the concern that the Stark facility as proposed would "not be sufficient to meet the needs of the plaintiff class." *Id.*

At the same time as it rejected the defective Stark plan, the *Coleman* court approved, with minor exceptions, every other construction project that the State proposed to address the substantial and conceded unmet need for specialized mental health care beds. State's Supp. Brief, Add. 5. The court did so without imposing capacity limits on any of the approved facilities.

Nor has the *Coleman* court imposed a population cap on any of the numerous other facilities it has approved since the three-judge court's August 4, 2009 Order. Thus, every prison but one in California remains crowded at well above 137.5% of capacity, and neither the *Coleman* court nor any other court has required the State to commence reducing the population of those prisons.

The State's assertions that the three-judge court "already ordered a population reduction" and that "the *Coleman* court views the population cap imposed by the three-judge court as equally binding on the population of particular facilities as it is on the overall population" are simply without merit. State's Supp. Brief 2. The single-judge order in the *Coleman* case does not provide grounds for noting probable jurisdiction over the State's appeal, and the appeal should be dismissed or the order below summarily affirmed.

Respectfully submitted,

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